SIEMENS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Inventor:	Thuy-Phong Le et al.)	Group Art Unit:	2446
	)		
Serial No.:	10/533,083)	Examiner:	Nilanont, Y.
	)		
Filed:	04/28/2005)	Confirmation No.:	2307

Title: METHOD AND APPARATUS FOR INTERCHANGING DATA USING A
TUNNEL CONNECTION

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APPELLANT'S REPLY BRIEF

Sir:

Pursuant to 37 C.F.R. § 41.41, this Reply Brief is responsive to the Examiner's Answer mailed 3 November 2009 in which the Examiner raised new points of argument. This is not a substitute for the Appeal Brief. Any ground for rejection in the Examiner's Answer that is not refuted herein is considered by Appellant to have been sufficiently argued in the Appeal Brief, such that no further comment is needed herein. Arguments herein focus on both new points of argument and issues identified in the Examiner's Answer.

ARGUMENT IN REPLY TO THE EXAMINER'S ANSWER

The following argument responds to select points of new argument beginning at page 10 of the Examiner's Answer. Beginning at page 10 of the Examiner's Answer the Examiner summarizes the Appellant's argument as three points of argument.

In response to the **first point of argument**, concerning absence of disclosure in the SGI reference of a tunnel connection exclusively used by only one network element, the Examiner responds at page 11 as follows:

(a). It is acknowledged that figure 3.2 of the SGI reference is a simplified illustration

(b). It is argued that instructions to create a tunnel that follow Figure 3.2 recite that systems on Net A and Net C are selected for the sending and receiving ends of the tunnel, and **hence** the tunnel is exclusively used by the selected systems.

Appellants respectfully disagree with point (b) for two reasons. First, the instructions grammatically recite: "select the systems on each network that you will use for the sending and receiving end of the tunnel." If there were only one system on each network chosen for sending or receiving, proper grammar would recite *system* instead of *systems*, i.e., "select the *system* on each network chosen for sending or receiving." Secondly, even if this grammatical distinction were not given weight, there is still **no logical basis** from which to conclude that hence the tunnel is exclusively used by the selected systems. That is, mere selection of one system for sending and one system for receiving – as ends of a tunnel - does not create an exclusivity wherein only those systems are permitted to use the tunnel. There is no support in the prior art for this contention and the argument only follows an effort to read into a simplified prior art figure that which is only taught by the Appellants. Noting, for example, that claim 8 provides two features (elements a and b; see page 7 of Appellants' Brief) it cannot be denied that two arrangements are possible, one (according to element a) being that of assigning to a node a globally unique address so that the node device forms a network-end terminal point when a plurality of network elements jointly use the tunnel connection. This illustrates that there is no logical basis for the Examiner's conclusion that a prior art tunnel would be exclusively used by only one systems on Net A and only one system on Net C. Furthermore, recognizing that the figure is simplified, there is no basis to conclude that there would be only one system on Net A and only one system on Net C.

The Examiner's argument at page 11 of the Answer also refers to the routers 1 and 2 of Figure 3.2 as incompatible physical gateways "as shown in the paragraph before figure 3.2 on page 11 ..." Appeallants cannot confirm that the text states such but, even if this were so, there is still no nexis between the Examinber's interpretation and the requirements of the claims on appeal. That is, even assuming that packets flow through the routers (as one might very well expect) it is not seen that there is any resulting exclusivity in use of the tunnel connection. Again, this is confirmed by the Appellants' disclosure and recitation in accord with element a (of claim 8) discussed at page 7 of the Appeal Brief.

Finally, also with regard to Appellants' **first point of argument**, it has been argued at page 12 of the Examiner's Answer that since the SGI paper mentions routers which do not support multicast and packets are sent to the Host selected as a receiving end, there is an exclusive use of the tunnel (apparently by the sending and receiving ends). Appellants cannot follow this argument and suggest that the argument does not lead to any basis for rejecting the claims. That is, for example, claim 8 is directed to a combination of elements a and b as explained at page 7 of the Appeal Brief; and there is no finding of this combination. To suggest some contrived interpretation of the prior art to find one missing element, at best, provides a piecemeal combination which the prior art would never be motivated to assemble. How can there be a motivation to combine element a with element b when it cannot even be confirmed that the element a is found in the SGI reference?

In response to the **second point of argument**, concerning exclusive use of the tunnel connection, the Examiner now argues that this is not the same as an exclusive use of the routers. Appellants' point of argument has been missed. The SGI reference does not provide any disclosure to suggest being configured to only support a "tunnel connection ... **exclusively** used by the network element [i.e., a Host]" - to the exclusion of use of tunnel connections by other Hosts on the same network.

In response to the **third point of argument**, concerning lack of motivation to use the claimed combinations (e.g., elements a and b of claim 8) in a Legacy system (see pages 9 – 10 of the Appeal Brief), the Examiner's Answer (see page 12) now contends that the term legacy system is intended to mean an incompatible system requiring its own tunnel as shown in Figure 3.2 of the SGI reference. The new argument states that one of ordinary skill would be motivated to combine a tunnel connection as shown in the SGI reference with the one disclosed in the

Chiles reference. So, in essence, the new argument appears to be that the SGI reference discloses incompatible routers, one of which corresponds to a legacy system, and one of ordinary skill would create a tunnel to accommodate the incompatible routers. However, none of this requires or even suggests that the resulting tunnel between hosts on Net A and Net B would be exclusively used by the two hosts. In fact, there does not appear to be any relation between a possibility that the routers may be incompatible and the existence of tunnel connections between the hosts. There is no apparent reason for allocating the tunnel to the exclusive use of one host at each end.

The responses to Appellant's argument as found in the Examiner's Answer do not establish that essential features of the independent claims 8 and 23 are present in the prior art. Specifically, for example, element b of claim 8 is absent from the prior art.

Conclusion

In summary, argument presented in the Examiner's Answer fails to identify requisite support to sustain rejection of each independent claim under Section 102. New points of argument are of little relevance under the law of anticipation. In view of these deficiencies, Appellants again respectfully submit that all of the rejections are in error. The Board is respectfully requested to reverse the final rejection of the Examiner and to remand the application to the Examiner with instructions to allow all of the pending claims.

Please charge any appropriate fees due in connection with this paper or credit any overpayments to Deposit Acct. No. 19-2179.

Respectfully submitted,

Dated: _____   By:_____

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